



### DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I declare that:

My residence, post office address and citizenship are as stated below next to my name; I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: **APPARATUS AND METHOD FOR COMBINING REALTIME AND NON-REALTIME ENCODED CONTENT** the specification of which was filed on December 9, 1999 as Application No. 09/458,796.

I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56. I claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

#### Prior Foreign Application(s)

Country	Application No.	Date of Filing	Priority Claimed Under 35 USC 119

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

Application No.	Filing Date

I claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application No.	Date of Filing	Status
09/428,066	October 27, 1999	Pending

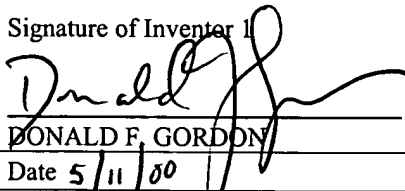
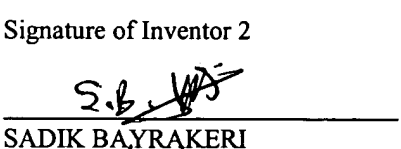
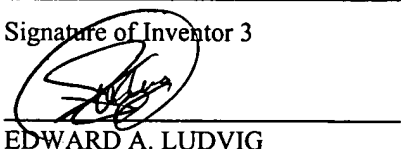
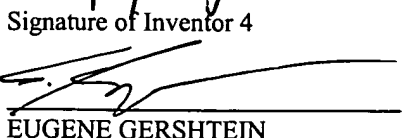
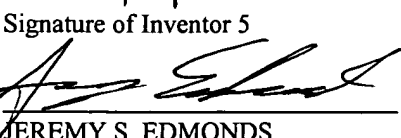
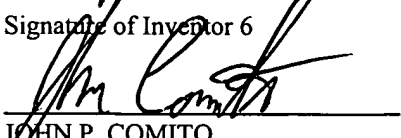
**POWER OF ATTORNEY:** As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

James K. Okamoto, Reg. No. 40,110  
William L. Shaffer, Reg. No. 37,234

Send Correspondence to: <b>James K. Okamoto</b> <b>TOWNSEND and TOWNSEND and CREW LLP</b> <b>Two Embarcadero Center, 8<sup>th</sup> Floor</b> <b>San Francisco, California 94111-3834</b>	Direct Telephone Calls to: (Name, Reg. No., Telephone No.) Name: James K. Okamoto Reg. No.: 40,110 Telephone: 650-326-2400
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Full Name of Inventor 1:	Last Name: <b>GORDON</b>	First Name: <b>DONALD</b>	Middle Name or Initial: <b>F.</b>	
Residence & Citizenship:	City: <b>Los Altos</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>	
Post Office Address:	Post Office Address: <b>465 Gabilan Street #10</b>	City: <b>Los Altos</b>	State/Country: <b>California</b>	Postal Code: <b>94022</b>
Full Name of Inventor 2:	Last Name: <b>BAYRAKERI</b>	First Name: <b>SADIK</b>	Middle Name or Initial:	
Residence & Citizenship:	City: <b>Foster City</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>Turkey</b>	
Post Office Address:	Post Office Address: <b>733 Shell Boulevard #104</b>	City: <b>Foster City</b>	State/Country: <b>California</b>	Postal Code: <b>94404</b>
Full Name of Inventor 3:	Last Name: <b>LUDVIG</b>	First Name: <b>EDWARD</b>	Middle Name or Initial: <b>A.</b>	
Residence & Citizenship:	City: <b>Redwood City</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>Canada</b>	
Post Office Address:	Post Office Address: <b>831 Canyon Road</b>	City: <b>Redwood City</b>	State/Country: <b>California</b>	Postal Code: <b>94061</b>
Full Name of Inventor 4:	Last Name: <b>GRSHTEN</b>	First Name: <b>EUGENE</b>	Middle Name or Initial:	
Residence & Citizenship:	City: <b>REDWOOD CITY</b> <del>Redwood Shores</del>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>	
Post Office Address:	Post Office Address: <b>1418 Valota Rd.</b> <del>401B Cork Harbor Circle</del>	City: <b>REDWOOD CITY</b> <del>Redwood Shores</del>	State/Country: <b>California</b>	Postal Code: <b>94065 94061</b>
Full Name of Inventor 5:	Last Name: <b>EDMONDS</b>	First Name: <b>JEREMY</b>	Middle Name or Initial: <b>S.</b>	
Residence & Citizenship:	City: <b>Castro Valley</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>	
Post Office Address:	Post Office Address: <b>18923 Sydney Circle</b>	City: <b>Castro Valley</b>	State/Country: <b>California</b>	Postal Code: <b>94546</b>
Full Name of Inventor 6:	Last Name: <b>COMITO</b>	First Name: <b>JOHN</b>	Middle Name or Initial: <b>P.</b>	
Residence & Citizenship:	City: <b>Redwood City</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>	
Post Office Address:	Post Office Address: <b>907 Pleasant Hill Road</b>	City: <b>Redwood City</b>	State/Country: <b>California</b>	Postal Code: <b>94061</b>

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature of Inventor 1  DONALD F. GORDON Date <b>5/11/00</b>	Signature of Inventor 2  SADIK BAYRAKERI Date <b>5/10/00</b>	Signature of Inventor 3  EDWARD A. LUDVIG Date <b>5/11/2000</b>
Signature of Inventor 4  EUGENE GERSHTEIN Date <b>06/05/10</b>	Signature of Inventor 5  JEREMY S. EDMONDS Date <b>5/10/00</b>	Signature of Inventor 6  JOHN P. COMITO Date <b>5/10/00</b>



Attorney Docket No.: 19880-000720  
Client Reference No.: 245-CIP3

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS**  
(37 CFR 1.9(f) & 1.27(e)) - SMALL BUSINESS CONCERN

Applicant or Patentee: Donald F. Gordon et al.  
Application or Patent No.: 09/458,796  
Filed or Issued: December 9, 1999  
Title: APPARATUS AND METHOD FOR COMBINING REALTIME AND NON-REALTIME ENCODED CONTENT

I hereby declare that I am:

- ☐ the owner of the small business concern identified below:  
☒ an official of the small business concern empowered to act on behalf of the concern identified below.

Name of Small Business Concern: DIVA Systems Corporation  
Address of Small Business Concern: 800 Saginaw Drive  
Redwood City, CA 94063

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.12, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees to the United States Patent and Trademark Office, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled APPARATUS AND METHOD FOR COMBINING REALTIME AND NON-REALTIME ENCODED CONTENT by inventor(s) described in:

- ☐ the specification filed herewith;  
☒ Application No. 09/458,796, filed December 9, 1999;  
☐ Patent No. \_\_\_\_\_, issued \_\_\_\_\_.

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights in the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person made the invention, or by any concern that would not qualify as a small business concern under 37 CFR 1.9(d), or a nonprofit organization under 37 CFR 1.9(e).

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
☐ Individual ☐ Small Business Concern ☐ Nonprofit Organization

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
☐ Individual ☐ Small Business Concern ☐ Nonprofit Organization

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Name of Person Signing: Stephanie Storms  
Title of Person if Other than Owner: SP - Vice President  
Address of Person Signing: 800 Saginaw Drive  
Redwood City, CA 94063

Signature: Stephanie A. Storms Date: 5/10/00